

May 2, 2007

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Chairman  
Federal Communications Commission  
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Washington DC 20554

Deborah Taylor Tate  
Commissioner  
Federal Communications Commission  
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Michael J. Copps  
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Jonathan S. Adelstein  
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Federal Communications Commission  
445 - 12th Street, S.W.  
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Re: *In The Matter of Federal-State Joint Board on Universal Service, High Cost Universal Service Support*, WC Docket No. 05-337

*In The Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Chairman Martin and Commissioners:

To address the ever increasing strain on the federal universal service system, several parties recently have proposed both short-term fixes to and long-term reform of the system. Although the specifics of these proposals vary, the need for the Commission to take immediate action to stabilize the universal service fund is clear, as evidenced by the Joint Board's recommendation that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers ("ETCs") may receive.<sup>1</sup> Approximately two months ago Verizon urged the Commission to "stabilize" the universal service fund as part of any reform plan.<sup>2</sup> More recently, AT&T endorsed "stabilization" of the universal service fund as a "crucial" "first step to long-term reform."<sup>3</sup> Windstream and Embarq

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<sup>1</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision (rel. May 1, 2007) ("*Recommended Decision*").

<sup>2</sup> Letter from Kathleen Grillo, Verizon, to Deborah Taylor Tate, FCC, and Ray Baum, Oregon Public Service Commission, WC Docket No. 05-337 at 2 (Feb. 9, 2007) ("*Verizon Letter*").

<sup>3</sup> Letter from Robert W. Quinn, Jr., AT&T, to Deborah Taylor Tate, FCC, and Ray Baum, Oregon Public Service Commission, WC Docket No. 05-337 at 2 (Mar. 22, 2007) ("*AT&T Letter*").

also recently provided thoughtful filings endorsing immediate steps to limit growth in universal service funding pending comprehensive reform.<sup>4</sup>

With a current contribution factor of 11.7% and with funding to support competitive ETCs expected to reach approximately \$1.3 billion in 2007,<sup>5</sup> the United States Telecom Association (“USTelecom”) agrees with the Joint Board that the Commission should take immediate action to protect consumers by limiting the growth in the high-cost universal service fund that threatens to undermine the entire system. The Joint Board’s *Recommended Decision* is a critical step in the path to reform the distribution side of universal service, and USTelecom strongly endorses approach. USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom represents companies offering a wide range of services across communications platforms, including local exchange, long distance, wireless, Internet, and video services. Therefore, the association is uniquely positioned to address these issues.

As the Joint Board correctly concluded, and as the recent Verizon, AT&T, Windstream and Embarq filings underscore, an immediate threat to the stability of the universal service program is the growth in the number of ETCs seeking universal service support.<sup>6</sup> Both the Commission and the Joint Board recognized this situation two years ago, establishing “a more rigorous ETC designation process” in an attempt to “improve the long-term sustainability of the universal service fund.”<sup>7</sup> However, tightening the requirements for ETC designation has done little to stem the rising number of carriers seeking ETC status and the increased amount of federal universal support they receive. In particular, more wireless ETCs and more supported lines have put unsustainable pressure on the fund. At the same time, much of this funding does little to serve core universal service goals as the overwhelming majority of study areas in the

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(Continued . . .)

<sup>4</sup> Letter from Eric Einhorn, Vice President – Federal Governmental Affairs, Windstream, to Deborah Taylor Tate, FCC, and Ray Baum, Oregon Public Service Commission, WC Docket No. 05-337 (April 2, 2007) (“*Windstream Letter*”); Letter from David Bartlett, Vice President – Federal Governmental Affairs, Embarq, to Deborah Taylor Tate, FCC, and Ray Baum, Oregon Public Service Commission, WC Docket No. 05-337 (April 12, 2007) (“*Embarq Letter*”).

<sup>5</sup> *Recommended Decision*, at ¶ 4.

<sup>6</sup> *Id.*; see also Opening Remarks of Chairman Kevin Martin, Federal-State Joint Board on Universal Service En Banc Meeting, February 20, 2007, at 4.

<sup>7</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd. 6371 ¶ 2 (2005).

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United States have multiple ETCs receiving universal service support, even though nationwide telephone penetration has remained relatively flat or has decreased.<sup>8</sup>

In USTelecom's view, an immediate interim limit on USF distributions to competitive ETCs as recommended by the Joint Board is an essential first step in the near term to stabilize the universal service fund. Taking this action would protect consumers by addressing the fundamental problem caused by increased support for competitive ETCs, particularly wireless ETCs.

Claims that temporary limits on universal service support to competitive ETCs would not be technological or competitively neutral ring hollow.<sup>9</sup> Universal service caps are not new, and almost a decade ago the Commission established an indexed limit on the high-cost fund for ETCs and capped the amount of corporate operations expense that an eligible telecommunications carrier could recover through the universal service support mechanisms for high loop costs.<sup>10</sup> The Commission adopted these measures in order to "prevent excessive growth" in the size of the universal service fund.<sup>11</sup>

In finding that these caps were consistent with the Telecommunications Act of 1996 ("Act"), the Fifth Circuit held that the Commission's "broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service."<sup>12</sup> The Court of Appeals rejected challenges to the caps on grounds that they would not provide sufficient universal service support to service providers. According to the Court of Appeals, "So long as there is sufficient and competitively-neutral funding to enable all *customers* to receive basic telecommunications

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<sup>8</sup> *AT&T Letter* at 2; .

<sup>9</sup> See Letter from Paul Garnett, Assistant Vice President – Regulatory Affairs, CTIA, to Marlene Dortch, Secretary, FCC (April 20, 2007) (stressing "the necessity of competitively-and technologically – neutral universal service policies") ("*CTIA Letter*").

<sup>10</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1977) ("*USF Order*"); *Fourth Order on Reconsideration in CC Docket No. 96-45; Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, 13 FCC Rcd 5318 (1977).

<sup>11</sup> *USF Order* at ¶ 282.

<sup>12</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-621 (5<sup>th</sup> Cir. 2001).

services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.”<sup>13</sup>

Unlike the high-cost fund for incumbent ETCs, the universal service support available to competitive ETCs has never been capped. Placing a temporary cap on universal service support for competitive ETCs would not jeopardize the sufficiency or competitive neutrality of universal service support. This is particularly true in light of the lower-cost service areas of most competitive ETCs and claims about the greater efficiencies associated with wireless technologies.<sup>14</sup> Because competitive ETCs typically obtain study area waivers and serve, on average, lower-cost areas than do the incumbent ETCs on whose costs support is calculated, the current approach of calculating wireless support likely distributes excessive support to competitive ETCs in violation of the Act. Moreover, if wireless technology is in fact more efficient than wireline technology, then this problem of excessive support is substantially increased. In fact, addressing excessive support will actually enhance the sufficiency and competitive neutrality of universal service support. As the Fifth Circuit observed, “Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.”<sup>15</sup> Capping universal service support for competitive ETCs on an interim basis would address this problem until the Commission can implement broad reform and likely would move the fund more closely to a technologically neutral mechanism.

USTelecom agrees with CTIA that any universal service reform must benefit consumers.<sup>16</sup> In USTelecom’s view, consumers would benefit from a temporary cap on universal service support for competitive ETCs because it would reduce the burden consumers face from an increasing contribution factor. Furthermore, a temporary cap on universal support for competitive ETCs would allow the Commission additional time to develop and implement much needed fundamental reforms. Doing nothing in the near term, which would only serve to raise the cost of communications services purchased by consumers, is simply not an option.

USTelecom recognizes the complexity of the issues facing the Commission and the Joint Board in reforming universal service. However, such complexity should not deter the

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<sup>13</sup> *Id.*

<sup>14</sup> See generally Written Testimony of Paul W. Garnett, Assistant Vice President – Regulatory Affairs, CTIA, before the United States House of Representatives, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, at 2 (June 21, 2006) (expressing CTIA’s belief “that a greater share [of] high-cost support clearly should be directed to deployment of *more efficient wireless networks* ...”) (emphasis added).

<sup>15</sup> *Alenco Communications*, 201 F.3d at 620.

<sup>16</sup> *CTIA Letter* at 3.

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Commission from taking immediate steps to stabilize the universal service fund and protect consumers from further growth in USF fees while undertaking long-term reform. Accordingly, USTelecom welcomes the Joint Board's *Recommended Decision* and looks forward to providing constructive comments on long-term reform measures being considered by the Joint Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter B. McCormick, Jr.", written in a cursive style.

Walter B. McCormick, Jr.  
President and CEO

cc: Dan Gonzalez  
Ian Dillner  
Scott Bergmann  
Scott Deutchman  
John Hunter  
Tom Navin  
Don Stockdale  
Jeremy Marcus  
Thomas Buckley  
Jennifer McKee  
Vickie Robinson  
Ted Burmeister